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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Gerrit H. Soepenberg et al. DOCKET NO. NL000395
CONFIRMATION NO. 6414

SERIAL NO. : 09/881,599 EXAMINER : Etienne P. LeRoux

FILED : June 14, 2001 ART UNIT : 2161

FOR : EFFICIENT RECORDING OF OBJECT CAROUSELS

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In Response to the "Notice of Non-Compliant Appeal Brief" dated July 13, 2007, Applicants enclose Appeal Brief submitted on May 7, 2007 with corrections deemed to be non-compliant.

No additional fees are believed to be necessitated by the foregoing amendment. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 502-470 for any underpayment, or credit any overages.

Respectfully submitted,
Daniel Piotrowski
Registration No. 42,079

Date: July 24, 2007

By: Steve Cha
Attorney for Applicant
Registration No. 44,069

Mail all correspondence to:

Daniel Piotrowski, Registration No. 42,079
Philips Intellectual Property & Standards
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
Phone: (914) 333-9608
Fax: (914) 332-0615

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Steve Cha, Reg. No. 44,069
(Name of Registered Rep.)

(Signature and Date)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

In re the Application

Inventor : Gerrit H. Soepenberg et al.
Application No. : 09/881,599
Filed : June 14, 2001
For : EFFICIENT RECORDING OF OBJECTCAROUSELS

APPEAL BRIEF

On Appeal from Group Art Unit 2161

Daniel J. Piotrowski
Registration No. 42,079


By: **Steve Cha**
Attorney for Applicant
Registration No. 44,069

Date: July 24, 2007

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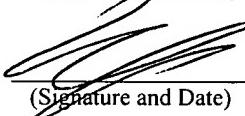

(Signature and Date)

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I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the present application, U.S. Philips Corporation, and not the party named in the above caption.

II. RELATED APPEALS AND INTERFERENCES

With regard to identifying by number and filing date all other appeals or interferences known to Appellant which will directly effect or be directly affected by or have a bearing on the Board's decision in this appeal, Appellant is not aware of any such appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-3, 6-10, 12-16 and 18-25 have been presented for examination. All of these claims are pending, stand finally rejected, and form the subject matter of the present appeal. Claims 4, 5, 11 and 17 have been cancelled

IV. STATUS OF AMENDMENTS

In response to the patent application, which is the subject of this appeal, filed on June 14, 2001, a first Office Action was mailed on September 26, 2003. The Office Action rejected claims 1- 3 under 35 USC §102(e) as being anticipated by Metz (USP no. 5,978,855). Claims 4, 10, and 16 were rejected under 35 USC 103(a) as being unpatentable over Metz in view of Hiroi (USPPA 2002/0022001). Claims 5, 11 and '7 were rejected as being unpatentable over Metz in view of Beyers (USP no. 5,235,619). Claims 6, 12, and 18 were rejected under 35 USC 103(a) as being unpatentable over Metz in view of Stalker (USPPA no. 2002/0091816). Claims 7-9, 13-15 and 19-21 were

rejected under 35 USC 130(a) as being unpatentable over Metz in view of Soloff (USPPA no. 2002/0188950).

On January 2, 2004, a response to the first Office Action was received in the Office that presented arguments why the references cited failed to anticipate the claimed invention. Claim 5 was redrafted into independent form as the current claim 1, but was not otherwise amended. Claim 4 was redrafted into independent form and an additional claim limitation was added to form new claim 22. Claims 10 and 16 were amended to depend from new claim 22. Originally filed claims 4, 5, 11 and 17 were canceled.

On March 21, 2004, a second and Final Office Action was entered into the record, which rejected the pending claims citing the same reasons for rejecting the claims as in the prior Office Action.

On May 5, 2004, a response to the second and Final Office Action was filed which presented additional arguments as to why the claimed invention was not anticipated or rendered obvious by the recited references. New claim 23 was added.

On June 6, 2004, a Request for Continued Examination of the instant application was filed, which requested that the amendments made in the response mailed on May 5, 2004 be entered and the application be reconsidered in view of the amendments made to the claims.

On September 15, 2004, an Office Action, responsive to the Request for Continued Examination, was mailed which rejected claims 1-3, 6-10, 12-16 and 18-22 as being anticipated by Inoue (USP no. 6,496,896). Claim 23 was rejected under 35 USC 103(a) as being unpatentable over the Applicant's admitted prior art.

On December 20, 2004, a response to the Office Action, dated September 15, 2004, was filed, which presented arguments as to why Inoue failed to anticipate the invention claimed and why the applicant's admitted prior art failed to render obvious the subject matter recited in claim 23.

On April 6, 2005, a second and Final Office Action was mailed which again rejected the claims citing the same references recited in rejecting the claims in the prior Office Action. Claim 23 was further rejected under 35 USC 103(a) as being unpatentable over Inoue in view of Ferguson (USP no. 6,052,555).

On June 9, 2005, a response to the second and Final Office action was filed. Claims 1, 10, 16 and 22 were amended. Claims 24 and 25 were added. The response provided additional arguments as to why the claimed invention was neither anticipated nor rendered obvious by the recited references.

On July 14, 2005, an Advisory Action was entered into the record, which stated that the amendments to the claims fail to place the application in a condition for allowance.

On July 20, 2005, a Request for Continued Examination was filed, which again requested that the instant application be considered in view of the amendments made to the claims.

On August 30, 2005, a Non-Final Office Action was mailed, which rejected all the pending claims as being anticipated by Inoue.

On November 30, 2005, a response to the rejection of the claims presented in the Non-Final Office Actions was filed that presented additional arguments as to why the

cited references fail to anticipate or render obvious the subject matter claimed. No amendments were made to the claims.

On January 31, 2006, a second Non-Final Office action was entered into the record. The Office Action rejected the claims for the same reasons recited in the prior Office Action. In response to the applicant's arguments the Office Action referred to col. 17, lines 35-46 for teaching an element recited in the claim (an indicator indicating valid time periods).

On May 5, 2006, a response to the Office Action was filed. No amendments were made to the claims and arguments were presented to show why the recited section of Inoue failed to teach the subject matter claimed.

On June 5 2006, an Advisory Action was filed, which maintained the reason for the rejection of the claims and states that the "examiner maintains that the time periods is adequately considered in the final Office Action."

A Notice of Appeal, with appropriate fee, was filed on June 29, 2006. This Appeal Brief is being timely filed, with appropriate fee.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The instant invention, as recited in independent claim 1, is a transmission system including a transmitter and at least one receiver (see page 3, line 24), wherein the transmitter sends data file and directory objects in predetermined groups of file and directory objects (see page 3, line 25-26) and the receiver is arranged to receive and store the transmitted groups of file and data objects (see page 3, lines 29-30) wherein the storage is preformed on the module level (see page 4, lines 3-6) and includes an

indication of an interval in which the stored information is valid (see page 7, line 22-page 8, line 2).

Claims 2, 3, 7-10, 12-16 and 18-21 depend from claim 1 and disclose additional features of the invention recited in claim 1.

Independent claim 22 recites a transmission system similar that claimed in claim 1, wherein the storage is preformed on an elementary level (see page 4, line 10) and also includes an indication of an interval in which the stored information is valid (see page 7, line 22-page 8, line 2).

Claims 23-25 depend from claim 22 and disclose additional features of the invention recited in claim 22. Claim 23 recites predetermined grouping formulation (see page 4, lines 7-17) wherein the elementary level corresponds to the lowest layer, (see page 7, lines 14-17), with the top layer consisting of the file and directory objects (see page 7, lines 4-6) and the middle layer consisting of modules (see page 7, lines 22-25).

Claims 4-5, 11 and 17 have been cancelled and are not subject for consideration by this Board.

VI. GROUND FOR REJECTION TO BE REVIEWED ON APPEAL

The issues in the present matter are whether:

1. Claims 1-3, 6-10, 12-16, 18-22, 24 and 25 are anticipated under 35 USC 102(e) by Inoue (USP no. 6,496,896);
2. Claim 23 is rendered obvious under 35 USC 103(a) [over Inoue] in view of applicant's admitted prior art; and

3. Claim 23 is rendered obvious under 35 USC 103(a) over Inoue in view of Ferguson (USP no. 6,052,555).

VII. ARGUMENT

I. Rejection of claims 1-3, 6-10, 12-16, 18-22, 24 and 25

Under 35 USC §102(e) by Inoue

Claims 1-3, 6-10, 12-16, 18-22, 24 and 25 are not anticipated under 35 USC §102(e) by Inoue because Inoue fails to show a limitation cited in independent claims 1 and 22.

The instant invention, as recited in claim 1, for example, discloses a transmission system including a transmitter and at least one receiver, wherein the transmitter sends data file and directory objects in predetermined groups of file and directory objects and the receiver is arranged to receive and store the transmitted groups of file and data objects wherein the storage is preformed on a module level and includes an indication of the interval in which the stored information is valid.

Inoue describes a transmission and recording apparatus and a recording method by which data can be communicated between different apparatus over a single data bus wherein data can be transmitted and/or received periodically and a second method wherein data can be transmitted and/or received asynchronously. (See Abstract).

Inoue Fails to Anticipate the Claimed Invention

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” Lindemann

Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added).

The Advisory Action, in maintaining the rejection of the claims, states that "[e]xaminer maintains that time periods is adequately considered in the final office action." The Advisory Action more specifically is referring to page 9, lines 8-14, of the Final Office Action, dated January 13, 2006, which state:

"FIGS. 6A to 6I illustrate an example of data when they are outputted from the terrestrial station 101 and transmitted to the satellite 102. It is to be noted that, as described hereinabove, the various data shown in FIGS. 6A to 6I are actually in a time base multiplexed state. Further, as seen in FIG. 6A, an event occurs within a period from time t1 to time t2, and another event occurs after time t2. The event here is, for example, with regard to a channel of a music program, a unit in which a set of a lineup of a plurality of tunes is changes and has a time of approximately 30 minutes or one hour."

Contrary to the statements found in the Advisory Action and the Final Office Action, Inoue fails to describe including "an indication for the interval in which they [the stored data] are valid," as is described in the claims.

A review of the referred-to Figures 6A to 6I, which are shown in the attached Appendix, illustrate a timing diagram for multiplexing audio and/or video data. More specifically, MPEG2 audio +video material A1 is transmitted (Fig. 6A) during interval t1 to t2 and material A2 is transmitted after t2. Similarly, MPEG Audio material B1 is repeatedly transmitted during interval t1 to t2 and material B2 is repeatedly transmitted during interval beginning at t2 (Fig. 6B).

Through Figs 6A-6I, Inoue discloses time periods when programs are transmitted from a transmitter. However, Inoue is totally silent as to providing an indicator when the materials A1, A2, B1, and/or B2 are valid.

Assuming that the reference to Fig. 6A is to show that during a transmission period transmitted materials are valid, then such an assumption would teach against providing an indicator indicating the period of validity. Rather, the transmission of the signal itself would indicate the period of validity without any further indicator being needed. Hence, assuming that validity is determined by transmission, Inoue fails to teach that an indicator is provided indicating the interval in which the material is valid.

Furthermore, with the assumption that transmission indicates validity, there is no reason for the receiver to store the transmitted information, as the transmitted information is only valid during transmission and any recording would be non-valid for viewing at a latter time.

Thus, contrary to the position stated in the Advisory Action and in the Final Office Action, Inoue fails to disclose each and every element recited in claim 1. Accordingly, Inoue cannot be said to anticipate claim 1.

For at least this reason, applicant respectfully requests that the grounds of rejection be reversed.

With regard to claim 22, this claim recites subject matter similar to that recited in claim 1 and is not anticipated by Inoue for the same arguments presented, herein.

For at least this reason, applicant respectfully requests that the grounds of rejection be reversed

With regard to the remaining claims, these claims depend from independent claims 1 and 22, which include subject matter not disclosed by and allowable over Inoue. Applicant respectfully submits that these claims are allowable at least for their dependence upon an allowable base claim, without even contemplating the merits of the dependent claims for reasons analogous to those held in *In re Fine*, 837 F.2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988) (if an independent claim is non-obvious under 35 U.S.C. §103(a), then any claim depending therefrom is non-obvious).

In view of the above, applicant submits that claims 1 and 22 and the dependent claims that depend therefrom are patently distinguishable and allowable over the teaching of Inoue.

For at least this reason, applicant respectfully requests that the grounds of rejection be reversed

II. Rejection of claim 23 Under 35 USC §103(a)
[over Inoue] in view of Applicant's Admitted Prior Art

With regard to the invention as recited in claim 23, this claim depends from claim 22, which has been shown to include subject matter not disclosed by Inoue. The Office Action has failed to show how, and where, the Applicant's admitted prior art corrects the deficiency found to exist in the Inoue reference.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met;

1. there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings;
2. there must be a reasonable expectation of success; and

3. the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As the Office Action has failed to provide any teaching in the admitted prior art (AAPA) to overcome the deficiency found in Inoue, applicant submits that even if there were some motivation to combine the teachings of Inoue and AAPA, at least one of the three basic criteria has not been met. Thus a *prima facie* case of obviousness has not been set forth.

In view of the above, applicant submits that claim 23 is not rendered obvious by the cited references and respectfully requests that the grounds of rejection be reversed.

III. Rejection of claim 23 Under 35 USC §103(a)
over Inoue in view of Ferguson

With regard to the invention as recited in claim 23, this claim depends from claim 22, which has been shown to include subject matter not disclosed by Inoue. The Office Action has failed to show how, and where, Ferguson corrects the deficiency found to exist in the Inoue reference.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met;

1. there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings;
2. there must be a reasonable expectation of success; and

3. the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As the Office Action has failed to show any teaching in Ferguson to overcome the deficiency found in Inoue, applicant submits that even if there were some motivation to combine the teachings of Inoue and Ferguson, at least one of the three basic criteria has not been met. Thus a *prima facie* case of obviousness has not been set forth.

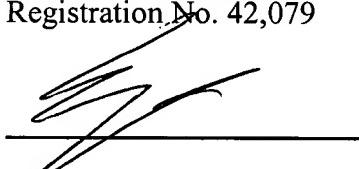
In view of the above, applicant submits that claim 23 is not rendered obvious by the cited references and respectfully requests that the grounds of rejection be reversed.

VIII. CONCLUSIONS

In view of the above analysis, it is respectfully submitted that the references cited, fail to anticipate or render obvious the subject matter of any of the present claims. Therefore, reversal of all outstanding grounds of rejection is respectfully solicited.

Respectfully submitted,

Daniel J. Piotrowski
Registration No. 42,079



Attorney for Applicant
Registration No. 44,069

Date: July 24, 2007

IX. CLAIMS APPENDIX

The claims which are the subject of this Appeal are:

Claim 1. A transmission system comprising a transmitter and at least one receiver configured to receive signals transmitted therefrom, wherein carousel-forming data file and directory objects are sent in cycles with predetermined groups of file and directory objects being formed into respective modules at the transmitter, with each module being transmitted as a whole, and the receiver being arranged to store, for retrieval upon subsequent playback, received file data and directory objects under a predetermined grouping formulation, wherein the file and directory modules are comprised in discrete data portions carried in an elementary data stream, with said predetermined grouping formulation for storage being at the module level further including an indication for the interval in which they are valid.

Claim 2. A transmitter for use in a system as claimed in claim 1, said transmitter comprising a connection to a source of data for transmission and data formatting means arranged to assemble into modules for transmission file data and directory objects.

Claim 3. A receiver for use in a system as claimed in claim 1, said receiver comprising means arranged to receive said transmitted modules and to store the file data and directory objects therein according to a predetermined grouping formulation.

Claims 4 – 5. (Canceled)

Claim 6. A transmission system according to claim 1, wherein the data including file and directory modules further comprises a version indicator to identify updates, with said modules further comprising discrete data portions carried in an elementary data

stream, with said predetermined grouping formulation for storage being at the elementary level.

Claim 7. A transmission system according to claim 1, wherein the file and directory modules are linked to time stamp data, with the transmitter being configured to include such time stamp data and the receiver component being arranged to recover such time stamps and utilise them in the reproduction from storage of the carousel.

Claim 8. A transmission system according to claim 7, wherein the reproduction from storage of the carousel is performed at data rates other than that indicated by said time stamps.

Claim 9. A transmission system according to claim 8, wherein the reproduction from storage of the carousel is performed at data rates greater than that indicated by said time stamps by reproducing carousel data at a data rate indicated by time stamp data and selectively interposing additional copies of reproduced carousel file and directory objects with said originally reproduced copies.

Claim 10. A transmitter as claimed in claim 2, said transmitter comprising a connection to a source of data for transmission and data formatting means arranged to assemble into modules for transmission (12) file data and directory objects.

Claim 11. (Canceled)

Claim 12. A transmitter according to claim 2, wherein the data including file and directory modules further comprises a version indicator to identify updates, with said

modules further comprising discrete data portions carried in an elementary data stream, with said predetermined grouping formulation for storage being at the elementary level.

Claim 13. A transmitter according to claim 2, wherein the file and directory modules are linked to time stamp data, with the transmitter being configured to include such time stamp data and the receiver component being arranged to recover such time stamps and utilise them in the reproduction from storage of the carousel.

Claim 14. A transmitter according to claim 13, wherein the reproduction from storage of the carousel is performed at data rates other than that indicated by said time stamps.

Claim 15. A transmitter according to claim 14, wherein the reproduction from storage of the carousel is performed at data rates greater than that indicated by said time stamps by reproducing carousel data at a data rate indicated by time stamp data and selectively interposing additional copies of reproduced carousel file and directory objects with said originally reproduced copies.

Claim 16. A receiver according to claim 2, said receiver comprising means arranged to receive said transmitted modules and to store the file data and directory objects therein according to a predetermined grouping formulation.

Claim 17. (Canceled)

Claim 18. A receiver according to claim 3, wherein the data including file and directory modules further comprises a version indicator to identify updates, with said

modules further comprising discrete data portions carried in an elementary data stream, with said predetermined grouping formulation for storage being at the elementary level.

Claim 19. A receiver according to claim 3, wherein the file and directory modules are linked to time stamp data, with the transmitter being configured to include such time stamp data and the receiver component being arranged to recover such time stamps and utilise them in the reproduction from storage of the carousel.

Claim 20. A receiver according to claim 19, wherein the reproduction from storage of the carousel is performed at data rates other than that indicated by said time stamps.

Claim 21. A receiver according to claim 20, wherein the reproduction from storage of the carousel is performed at data rates greater than that indicated by said time stamps by reproducing carousel data at a data rate indicated by time stamp data and selectively interposing additional copies of reproduced carousel file and directory objects with said originally reproduced copies.

Claim 22. A transmission system comprising a transmitter and at least one receiver configured to receive signals transmitted therefrom, wherein carousel-forming data file and directory objects are sent in cycles with predetermined groups of file and directory objects being formed into respective modules at the transmitter, with each module being transmitted as a whole, and the receiver being arranged to store, for retrieval upon subsequent playback, received file data and directory objects under a predetermined grouping formulation, wherein the file and directory modules are comprised in discrete data portions carried in an elementary data stream, with said predetermined grouping

formulation for storage being at the elementary level further including an indication for the interval in which they are valid.

Claim 23. The transmission system of claim 22, wherein, with respect to said predetermined grouping formulation, the elementary level corresponds to the lowest layer of an object carousel, with the top layer consisting of the file and directory objects and the middle layer consisting of modules.

Claim 24. A receiver according to claim 22, said receiver comprising means arranged to receive said transmitted modules and to store the file data and directory objects therein according to a predetermined grouping formulation.

Claim 25. A transmitter as claimed in claim 22, said transmitter comprising a connection to a source of data for transmission and data formatting means arranged to assemble into modules for transmission (12) file data and directory objects.

X. EVIDENCE APPENDIX

Figures 6A-6I of the Inoue reference, which are referred to in the Final Office Action, are included herein for the convenience of this Honorable Board.

XI. RELATED PROCEEDING APPENDIX

No related proceedings are pending and, hence, no information regarding same is available.